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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/684,314

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Pagotto Amedeo

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RUSSO & DUCKWORTH, LLP  
9090 IRVINE CENTER DRIVE, SECOND FLOOR  
IRVINE, CA 92618

EXAMINER

JOYNER, KEVIN

ART UNIT

PAPER NUMBER

1797

MAIL DATE

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08/22/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/684,314 | <b>Applicant(s)</b><br>AMEDEO ET AL. |  |
|                              | <b>Examiner</b><br>KEVIN C. JOYNER   | <b>Art Unit</b><br>1797              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-6 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-20 is/are allowed.
- 6) ☒ Claim(s) 4-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**FINAL ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chitre et al. (U.S. Patent No. 4,687,895) in view of Ruozi (U.S. Patent No. 5,074,200).

Chitre discloses a conditioning system for sterilizing products comprising:

A product conditioning unit including a tunnel having two pairs of parallel sidewalls and an entrance and an exit to form a conduit having a substantially quadrilateral cross-section, said tunnel subdivided into one or more consecutively aligned stages as shown in Figures 1, 3 & 4;

A plurality of pressure sealing doors (2) to seal at least one stage to form a pressurizable stage (column 5, lines 55-68);

A pressurizing means for controlling the pressure of said pressurizable stage (column 6, lines 10-27);

A heating means for providing heating in at least said pressurizable stage of the conditioning unit, said heating means including a plurality of microwave sources (69) for creating a microwave field for heating products (column 6, lines 62-68; column 7, lines 1-22; Figures 5-6); and

A conveyor means for transporting products from upline to downline through said conditioning unit (Figure 4). More specifically, as clearly shown in Figures 1 and 3, a tunnel is provided inside two pairs of parallel sidewalls forming a substantially quadrilateral cross section wherein said tunnel is divided into stages. As disclosed in column 6, lines 10-25, each stage is provided with a controlled gaseous environment causing a positive pressure system inside said stage, which meets the limitation regarding the pressurizing means and pressurizable stage. Chitre does not appear to disclose that said microwave sources are directly connected to a pair of opposing sidewalls wherein said microwave sources are arranged so that products traveling upline to downline through said tunnel are positioned between said microwave sources.

Ruozi discloses a conditioning system for sterilizing products comprising a conditioning unit including a tunnel, a conveyor, and a heating means including a plurality of microwave sources for creating a microwave field for heating and sterilizing products (column 2, lines 10-40). The reference continues to disclose that said microwave sources (24) are directly connected to a pair of opposing sidewalls wherein said microwave sources are arranged so that products traveling upline to downline through said tunnel are positioned between said microwave sources (Abstract; Figure 4). More specifically, the source of the microwaves is ultimately from the generating means (24), which is appropriately named the microwave generator by Ruozhi. As shown in Figure 4, two sources (24) are positioned on the left and right of the tunnel wherein the product travels between said sources. The sources are provided in such a position in order to promote uniform distribution of the radiation to the products (column

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1, lines 53-58; column 2, lines 2-6; Abstract). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Chitre to directly connect said microwave sources to a pair of opposing sidewalls wherein said microwave sources are arranged so that products traveling upline to downline through said tunnel are positioned between said microwave sources in order to provide a plurality of sources from various angles and ultimately promote uniform distribution of the radiation to the products as exemplified by Ruozhi.

Concerning claim 5, Chitre continues to disclose that said tunnel comprises a plurality of stages and each of said stages has opposing parallel top and bottom walls and opposing parallel sidewalls so that said tunnel has a substantially rectangular cross section as shown in Figures 1 and 4. Regarding claim 6, Chitre continues to disclose that the system is provided with at least four stages in said tunnel (Figure 4), wherein said stages are capable of operating as a preheating stage, a heating stage, a holding stage, and a cooling stage. More specifically, the temperature of each stage is controlled by a control panel, thus allowing for one stage to preheat the product, a second stage to heat the product, and a third stage that allows the product to cool. Controls are also provided to operate the conveyor means to transport products from one stage to the next, which allows for one of said stages to hold the product in the stage and therefore providing a holding stage as disclosed in column 5, lines 12-21. As such the limitations of claim 6 are met with respect to Chitre.

***Response to Arguments***

3. Applicant's arguments filed May 8, 2008 have been fully considered but they are not persuasive.

*Applicant's principle arguments are:*

*(a) The individual chambers within Chitre did not appear to be airtight because each chamber includes a flue 65 and that the bottom of column 5 states that small portions of the apertures are not closed off by the doors. Thus, it was argued that each stage could not be airtight and thus could not be pressurizable.*

As stated at the bottom of column 5, Chitre discloses that;

A vertically sliding door is slideable across the entrance apertures 19 and exit apertures 21 to **close off** each microwave cavity 11 or purge chamber 13 from an adjacent microwave cavity 11 or purge chamber 13 or the outside environment, the bottom edge 49 of each door **abutting** the top surface of a pallet 17. Small portions of the apertures 19 and 21 beneath the pallet 17 providing clearance for the pallet are not closed off by the doors 17.

Although Chitre does discuss a clearance at the bottom of each stage, this clearance is provided so at any point in time, the doors 17 will not crush the pallets when they are closed. Chitre however, specifically states that the cavities are **closed off** from other cavities and that the door **abuts** the top surface of a pallet that enters the cavity, wherein abut is defined as touching or joining at the edge or border of.

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Therefore, the cavity is sealed off from other cavities. With regard to the limitations of the pressurized stage, Chitre discloses this as well. Applicant is correct in noting that a flue 65 is present in each cavity. This is provided in order to allow air to exit said stage due to an inflow of air from sources 127. These sources provide an inflow of air that exerts a force or pressure on the products as well as any other surface that the inflow of air contacts inside said stage (For example, if a person walks outside and a heavy wind blows upon them, then a force of pressure is exerted on the person). As such, the cavities of Chitre are pressurized by the inflow of air, which meets the limitations of the claims as set forth.

*(b) Chitre does not disclose microwave sources directly connected to opposing sidewalls of a chamber.*

The argument is moot in view of the new grounds of rejection.

### **Conclusion**

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN C. JOYNER whose telephone number is (571)272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCJ

/Jill Warden/  
Supervisory Patent Examiner, Art Unit 1797